IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 969 of 2005

1. Ramakant Suryadin Dubey
and another ..Petitioners

vs.

1. Mrs.Manju Krishna Mohan
Tiwari and others ..Respondents

Shri R.D.Mishra for petitioners.
Smt.Ashlesha Mirashi with Shri A.R.Pande for respondent no.1.

CORAM: A.P.SHAH J.
14th September,2005

P.C.

. Heard Counsel appearing for both sides. Perused the judgments of the lower courts.

2. The petition arises out of the obstructionist proceedings. The short question is whether the courts below were right in holding that the obstructionists have no right, title or interest in the suit property. Their case is that an oral licence was created in their favour and they were residing in the suit premises since 1969-70. It is seen that the obstructionists are solely relying upon the voters list to establish their possession prior to 1st February, 1973. It was found by the lower Courts that the names given in the voters list are not exactly corresponding to the names of the obstructionists and there is absolutely no evidence to show that a licence was created in their favour and they were paying licence fee or compensation to the landlord. It is also seen that oral evidence led is not consistent

with the pleadings. It was pleaded that the leave and licence was created only in favour of the obstructionist no.3. However, in the evidence it was claimed that leave and licence was created jointly in favour of all of them. On appreciation of evidence produced by the parties the courts below have recorded concurrent findings that the obstructionists have failed to prove the licence.

3. It appears that a plea was also raised that the original defendant was a paying guest and not a licensee and, therefore, decree passed by the Small Causes Court was without jurisdiction. However, no evidence was led on this aspect of the matter. In absence of any evidence it is not possible to accept the plea that the decree was without jurisdiction. No interference is warranted to interfere with the concurrent findings of facts recorded by the courts below. Petition is dismissed.